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9200/1623

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bashir Zikria, et al  
 Serial No.: 08/837840  
 Filed: April 22, 1997  
 For: Capillary Membrane Stabilization And Reduction  
 Of Tissue Injury . . .

Group: 1023

Examiner: Gary Kunz

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

September 4, 2004

PETITION TO WITHDRAW HOLDING OF ABANDONMENT  
 BASED ON FAILURE TO RECEIVE OFFICE ACTION  
 (MPEP 711.03(c) II AND 37 CFR SECTION 1.181)

1. The undersigned received a Notice of Abandonment of the above-identified application dated August 9, 2004, for "failure to timely pay the requested issue fee and publication fee . . . within the statutory period of thee months from the mailing of the notice of allowance." (Exhibit A)
2. The Notice of Allowance and Fees Due was never received.
3. On May 28, 2004, and June 28, 2004, the undersigned forwarded status letters to the Patent and Trademark Office inquiring into the status of the application (Exhibits B and C). No response was ever received to the requests for status.
4. As no Notice of Allowance was ever received, nothing was docketed for response.

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5. When an office action or any matter requiring response is required, several entries are made directly on the face of the office action (Exhibit D). These dates are then entered into a docket book for taking up for review and/or action (see enclosed pages of docket book, Exhibits E-G). An example of the docketing of an issue fee is seen from the attached Exhibits H and I.
6. As no Notice of Allowance was received, there could not have been nor was there any reason to docket the same.
7. It is noted that the office action doesn't reference the date of the Notice of Allowance.
8. Immediately upon receipt of the missing papers, the fees will be paid.
9. No fee is required.
10. The undersigned declares that all statements made herein are true and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document and the registration to which it relates.

It is respectfully requested that this Petition be granted and that the undersigned  
be notified of the status of the application and/or when a patent will be issued.

Respectfully submitted,

*Evelyn M. Sommer*  
Evelyn M. Sommer  
Registration No.19603  
Attorney for Applicants  
250 Park Avenue Room 825  
New York, New York 10022  
212-527-2657

Certificate of Mailing

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addressed to Commissioner for Patents, P.O. Box 1450, Alexandria,  
Virginia 22313-1450, on the ~~Sept~~ *Sept*, 2004

*Evelyn Sommer* *10-2*



SEP 13 2004  
U.S. PATENT AND TRADEMARK OFFICE



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/837,840	04/22/1997	BASHIR ZIKRIA		8063

43399 7590 08/09/2004  
EVELYN M. SOMMER  
825 THIRD AVENUE, 30TH FLOOR  
NEW YORK, NY 10022

EXAMINER	
OWENS JR, HOWARD V	
ART UNIT	PAPER NUMBER
1623	17

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SEP 17 2004

TECH CENTER 1600/2900



UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO.

08/837840

SEP 17 2004

TECH CENTER 1600/2900

EXAMINER

ART UNIT

PAPER NUMBER

17

DATE MAILED:

**NOTICE OF ABANDONMENT**

This application is abandoned in view of:

Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.

A reply (with Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_ which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.

A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).

A reply was received on \_\_\_\_\_, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).

No reply has been received.

Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85) (or Notice of Publication Fee Due).

The submitted fee of \$ \_\_\_\_\_ is insufficient. A balance of \$ \_\_\_\_\_ is due.  
The issue fee by 37 CFR 1.18 is \$ \_\_\_\_\_. The publication fee, if required, by 37 CFR 1.18(d) is \$ \_\_\_\_\_.

The issue fee and publication fee, if applicable, have not been received.

Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).

Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.

No corrected drawings have been received.

The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.

The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.

The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.

The reason(s) below:

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be prompt and minimize any negative effects on patent term.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bashir Zikria, et al  
Serial No.: 08/837840  
Filed: April 22, 1997  
For: Capillary Membrane Stabilization And Reduction  
Of Tissue Injury . . .  
Group: 1023  
Examiner: Gary Kunz  
Mail Stop Status Request  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

May 26, 2004

SEP 17 2004  
TECH CENTER 1600/2800

Status Letter

The above-entitled application was appealed to the Board of Patent Appeals and  
Interferences ("Board").

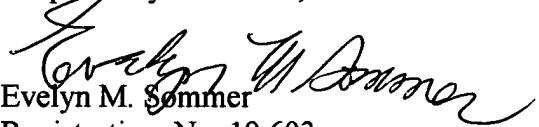
On May 28, 2002, the Board issued a decision in which the rejection of claims 1-20, all of the claims in the case, was **reversed**. Due to problems with the undersigned's mailing address, the decision was not received for some time. The Board and the Office were contacted and it was delivered, the matter of the address was completely resolved.

To date, however, no patent has been issued on the application nor any reason provided why this has not happened.

*Exhibit B*

It is respectfully requested that the undersigned be notified as soon as possible of the status of the application and/or when the patent will issue.

Respectfully submitted,

  
Evelyn M. Sommer  
Registration, No. 19,603  
Attorney for Applicants  
250 Park Avenue 8<sup>th</sup> Floor  
New York, New York 10022  
212-527-2657

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bashir Zikria, et al  
Serial No.: 08/837840  
Filed: April 22, 1997  
For: Capillary Membrane Stabilization And Reduction  
Of Tissue Injury . . .  
Group: 1023  
Examiner: Gary Kunz  
Mail Stop Status Request  
Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

June 25, 2004

SEP 17 2004  
TECH CENTER 1600/2900

Second Status Request

The above-entitled application was appealed to the Board of Patent Appeals and  
Interferences ("Board").

On May 28, 2002, the Board issued a decision in which the rejection of claims 1-20, all of the claims in the case, was reversed. Due to problems with the undersigned's mailing address the decision was not received for some time. The Board and the Office were contacted and it was delivered, the matter of the address was completely resolved.

To date, however, no patent has been issued on the application nor any reason provided why this has not happened.

*Exhibit C*

It is respectfully requested that the undersigned be notified as soon as possible of the status of the application and/or when the patent will issue.

A copy of the previous status letter is enclosed.

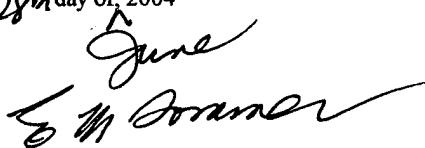
Respectfully submitted,



Evelyn M. Sommer  
Registration No. 19,603  
Attorney for Applicants  
250 Park Avenue Room 825  
New York, New York 10022  
212-527-2657

Certificate of Mailing

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O I P E S C I S  
SEP 13 2004  
P A T E N T & T R A D E M A R K O F F I C E

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

## NOTICE OF ALLOWANCE AND FEE(S) DUE

7590

06/13/2003

Evelyn M. Sommer  
825 Third Avenue  
30th Floor  
New York, NY 10022-7519

EXAMINER

SEP 17 2004

BROWN, MICHAEL A

TECH CENTER 1600/2800

ART UNIT

CLASS-SUBCLASS

3764

128-848000

DATE MAILED: 06/13/2003

APPLICATION NO.	FILING DATE	FIRST NAME: INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/967,562	11/12/1997	BASHIR ZIKRIA		7262

TITLE OF INVENTION: ANTI-SNORING APPARATUS

7/15/03  
8/15/03  
9/15/03

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$650	\$0	\$650	09/15/2003

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.**

### HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

Applicant claims SMALL ENTITY status.  
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

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Patent Spec 2,183,702 - 8/18/04

Exhibit E

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Exhibit I

O I P E JC169  
SEP 13 2004  
PATENT & TRADEMARK OFFICE

Approved for use through 11/30/2005. OMB 0651-0035  
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**CHANGE OF  
CORRESPONDENCE ADDRESS**  
*Application*

Address to:  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450.

Application Number	08/837840
Filing Date	4/17/97
First Named Inventor	Bashir ZIRRIA
Art Unit	1023
Examiner Name	GARY KUNZ
Attorney Docket Number	ZIRRIA

Please change the Correspondence Address for the above-identified patent application to:



Customer Number:

0000 43398

OR

<input type="checkbox"/> Firm or Individual Name	EVELYN M. SOMMER				
Address	250 PARK AVE				
Address	RM 825				
City	New YORK	State	NY	zip	10022
Country	USA				
Telephone	212 527 2657	Fax	203 358-0755		

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I am the:

SEP 17 2004

TECH CENTER 1800/2800

- Applicant/Inventor
- Assignee of record of the entire interest.  
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).
- Attorney or Agent of record. Registration Number 19,603
- Registered practitioner named in the application transmittal letter in an application without an executed oath or declaration. See 37 CFR 1.33(a)(1). Registration Number \_\_\_\_\_

Typed or Printed Name

EVELYN M. SOMMER

Signature

Evelyn M. Sommer

Date

Sept 17, 2004

Telephone

212 527-2657

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

\*Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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